

19. A multilayer structure of Claim 14, wherein layer (E) is a layer of a nitrogen-containing or oxygen-containing polar resin which is a polyamide, an aliphatic polyketone, a saponified ethylene-vinyl acetate copolymer or a polyester resin.

REMARKS

In the Specification

An abstract on a separate sheet is attached.

Provisional Rejection Under Obviousness-Type Double Patenting

Claims 10-18 stand provisionally rejected as allegedly unpatentable over claims 1-8 of copending Application No. 09/544,614. Because this is a provisional rejection, submission of a terminal disclaimer would be premature. Claims 1-8 of the copending application could be abandoned or amended to moot the rejection. It should be noted that a provisional rejection cannot be maintained as the sole ground of rejection against an application. Thus, since all other rejections are believed overcome, this provisional rejection must be withdrawn.

Claim Rejections under 35 USC § 112

Applicants amend claim 14 by defining layer (E). No change in scope is achieved. Applicants further clarify the claim by amending the definition of layer (E) whose definition would have been obvious to one of ordinary skill in the art, especially in light of the specification page 9, lines 3-10. With regard to the rejections of claims 10-13 as allegedly being incomplete by omitting essential elements as noted in the Office Action, applicants respectfully disagree. One of ordinary skill in the art is familiar with the noted designations on the one hand, and they are also explained in the specification on the other hand. See, page 1 lines 15 to the end of page 1, page 8 lines 26 to the end of page 8. Explicitly inserting their definition into the claims is therefore not necessary. The claims are definite to one of ordinary skill in the art when read in light of the specification. Reconsideration of the rejection is respectfully requested.

Claim Rejections under 35 USC § 102

Claims 10-18 are rejected under 35 USC § 102(b) as allegedly being anticipated by Nagano, US 4,397,916.

To anticipate a claim, the reference must teach every element of the claim. Nagano fails to teach or suggest a polymer (A) comprising a blend of polyethylene (A₁) and of a polymer (A₂) selected from the group consisting of elastomers, very low density polyethylenes and ethylene copolymers, and the (A₁)+(A₂) blend being cografted with an unsaturated carboxylic acid. Rather, Nagano discloses only one ethylene resin being grafted, i.e., the resin (i) derived from an ethylene polymer which contains 0 to 15 mole % of at least one alpha-olefin having 3 to 30 carbon atoms as a comonomer (see column 2, lines 50-53 and the Examples). There is no blend and no co-grafting of such a blend in Nagano. Thus, no anticipation.

Additionally, applicants traverse the assertion that Nagano discloses at column 3, line 14, 5 to 30 parts of a polymer. Rather, Nagano discloses that the graft-modified ethylene resin (i) is obtained by modifying an ethylene polymer containing 0 to 15 mole % of an alpha-olefin. In addition, Nagano fails to disclose at column 4, line 65, 95 to 70 parts of polyethylene (B). Rather, Nagano discloses that the polymer (ii) is a rubbery resin with an ethylene content of 60 to 90 moles % (column 4, lines 51-66).

Moreover, Nagano fails to disclose the blend of (A) and (B) having an MFI measured according to ASTM D1238 at 190°C/2.16 kg of between 0.1 and 3g/10min. Rather, Nagano discloses in Table 1 the MFI₂ of the ethylene polymers which are not grafted. Nagano discloses the MI₁₀/MI₂ for the blend of a graft-modified ethylene resin and an unmodified ethylene polymer in Tables 5 and 6. This means the MFI under a load of 10 kg divided by the MFI under a load of 2.16 kg. Upon information and belief, this ratio cannot be correlated with the MFI values measured under a load of 2.16 kg, as expressed in claim 10.

For each of the above reasons, it is urged that Nagano fails to anticipate the instant claims and thus the 35 USC §102 rejection should be withdrawn.

Furthermore, the Nagano offers no suggestion or motivation to modify the disclosed invention in a way which would direct one of ordinary skill in the art to the presently claimed invention. Nagano therefore lacks support for a rejection under section 103 as well.

Reconsideration of all the claims is thus respectfully and courteously requested. Applicants believe that the claims are patentably distinct from the prior art, and that the claims are in a form ready for allowance, but if there are any residual issues which can be expeditiously resolved by a telephone conference, the Examiner is courteously invited to telephone Counsel at the number

indicated below.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned "**Version With Markings To Show Changes Made**".

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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ABSTRACT

C' The present invention relates to a coextrusion binder useful for petrol tanks of HDPE/binder/EVOH or PA/binder/HDPE structure.

Version With Markings To Show Changes Made

In the Claims

Claim 14 is amended as follows:

14. (Amended) A multilayer structure comprising a layer comprising the binder of Claim 10 and, directly attached to the latter, a layer (E) ~~selected from the group consisting of~~ which ~~is a layer of a~~ nitrogen-containing or oxygen-containing polar resin, ~~a layer of polyamide resin, a layer of an aliphatic polyketone, a layer of a saponified ethylene vinyl acetate copolymer (EVOH), a layer of a polyester resin, and~~ or a metal layer.

Claim 19 is newly added.